

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
RAINBOW POPCORN COMPANY, INC.,)	CASE NO. BK08-40014-TLS
Debtor(s).)	
<u>RAINBOW POPCORN COMPANY, INC.,</u>)	A08-4005-TLS
)	
Plaintiff,)	7:06CV5015
)	
vs.)	CH. 11
)	
INTERGRAIN SPECIALTY PRODUCTS,)	
L.L.C., an Indiana limited liability company;)	
ALMCO, INC., an Indiana corporation; and)	
JOHN WALTHALL,)	
)	
Defendants.)	

REPORT & RECOMMENDATION

This matter is before the court on the debtor-plaintiff's status report (Fil. #4).

Rainbow Popcorn Company filed a complaint in federal district court in Nebraska in June 2006 alleging breach of a joint venture agreement and requesting an accounting. Trial was scheduled for February 2008. In December 2007, the plaintiff moved to amend its complaint to add causes of action for breach of contract and for violation of the Racketeer Influenced and Corrupt Organizations Act. That motion was pending at the time the plaintiff filed its bankruptcy case. At the same time, the parties were experiencing disagreements regarding discovery and witnesses for trial, and motions concerning those disputes were pending at the time the bankruptcy case was filed. The district court transferred the case to this court upon Rainbow Popcorn Company's suggestion of bankruptcy.

After reviewing the matter, I respectfully recommend to the United States District Court for the District of Nebraska that reference of this case be withdrawn for further proceedings. The case involves issues of federal law not commonly dealt with by this court; the plaintiff has requested a jury trial on those issues, which is more appropriately held in district court; and the district court was intimately involved in the pretrial management of this case by the time it was stayed as a result of the bankruptcy petition. These reasons all favor the return of the case to the district court.

The debtor has standing to prosecute this cause of action. The matter does not appear to be a core proceeding as that term is used in bankruptcy law. This litigation is separate from the bankruptcy case, although any proceeds of a judgment or settlement received by the debtor may be subject to inclusion in the Chapter 11 plan.

I therefore respectfully recommend to the United States District Court for the District of Nebraska that it withdraw the reference of this adversary proceeding to go forward with the litigation.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local court rules.

DATED: February 14, 2008

RESPECTFULLY SUBMITTED,

/s/ Thomas L. Saladino
United States Bankruptcy Judge

Notice given by the Court to:

Philip M. Kelly	S. David Schreiber
Terrance O. Waite	James J. Paloucek
Jason M. Massaro	Lante K. Earnest
U.S. Trustee	